

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 320

97TH GENERAL ASSEMBLY

0493L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 213.010 and 213.111, RSMo, and to enact in lieu thereof three new sections relating to unlawful discriminatory practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 213.010 and 213.111, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 213.010, 213.111, and 285.575, to read as
3 follows:

213.010. As used in this chapter, the following terms shall mean:

2 (1) "Age", an age of forty or more years but less than seventy years, except that it shall
3 not be an unlawful employment practice for an employer to require the compulsory retirement
4 of any person who has attained the age of sixty-five and who, for the two-year period
5 immediately before retirement, is employed in a bona fide executive or high policy-making
6 position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from
7 a pension, profit sharing, savings or deferred compensation plan, or any combination of such
8 plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars;

9 (2) **"Because" or "because of", as it relates to a decision or action, the protected**
10 **criterion was a motivating factor unless the decision or action has an adverse impact on the**
11 **protected criterion. In which case, courts shall rely heavily upon judicial interpretations**
12 **of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et. seq., as amended;**
13 **the Age Discrimination Employment Act of 1967, 29 U.S.C. Section 621, et. seq., as**
14 **amended; and the Americans With Disabilities Act, 42 U.S.C. Section 12101, et. seq., as**
15 **amended;**

16 (3) "Commission", the Missouri commission on human rights;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 [(3)] (4) "Complainant", a person who has filed a complaint with the commission
18 alleging that another person has engaged in a prohibited discriminatory practice;

19 [(4)] (5) "Disability", a physical or mental impairment which substantially limits one or
20 more of a person's major life activities, being regarded as having such an impairment, or a record
21 of having such an impairment, which with or without reasonable accommodation does not
22 interfere with performing the job, utilizing the place of public accommodation, or occupying the
23 dwelling in question. For purposes of this chapter, the term "disability" does not include current,
24 illegal use of or addiction to a controlled substance as such term is defined by section 195.010;
25 however, a person may be considered to have a disability if that person:

26 (a) Has successfully completed a supervised drug rehabilitation program and is no longer
27 engaging in the illegal use of, and is not currently addicted to, a controlled substance or has
28 otherwise been rehabilitated successfully and is no longer engaging in such use and is not
29 currently addicted;

30 (b) Is participating in a supervised rehabilitation program and is no longer engaging in
31 illegal use of controlled substances; or

32 (c) Is erroneously regarded as currently illegally using, or being addicted to, a controlled
33 substance;

34 [(5)] (6) "Discrimination", any unfair treatment based on race, color, religion, national
35 origin, ancestry, sex, age as it relates to employment, disability, or familial status as it relates to
36 housing;

37 [(6)] (7) "Dwelling", any building, structure or portion thereof which is occupied as, or
38 designed or intended for occupancy as, a residence by one or more families, and any vacant land
39 which is offered for sale or lease for the construction or location thereon of any such building,
40 structure or portion thereof;

41 [(7)] (8) "Employer" [includes] , **a person engaged in an industry affecting commerce**
42 **who has six or more employees for each working day in each of the twenty or more**
43 **calendar weeks in a current or preceding calendar year, and shall include** the state, or any
44 political or civil subdivision thereof, or [any person employing six or more persons within the
45 state, and] any person directly acting in the interest of an employer, but does not include
46 corporations and associations owned and operated by religious or sectarian groups;

47 [(8)] (9) "Employment agency" includes any person or agency, public or private,
48 regularly undertaking with or without compensation to procure employees for an employer or
49 to procure for employees opportunities to work for an employer and includes any person acting
50 in the interest of such a person;

51 [(9)] (10) "Executive director", the executive director of the Missouri commission on
52 human rights;

53 [(10)] **(11)** "Familial status", one or more individuals who have not attained the age of
54 eighteen years being domiciled with:

55 (a) A parent or another person having legal custody of such individual; or

56 (b) The designee of such parent or other person having such custody, with the written
57 permission of such parent or other person. The protections afforded against discrimination on
58 the basis of familial status shall apply to any person who is pregnant or is in the process of
59 securing legal custody of any individual who has not attained the age of eighteen years;

60 [(11)] **(12)** "Human rights fund", a fund established to receive civil penalties as required
61 by federal regulations and as set forth by subdivision (2) of subsection 11 of section 213.075, and
62 which will be disbursed to offset additional expenses related to compliance with the Department
63 of Housing and Urban Development regulations;

64 [(12)] **(13)** "Labor organization" includes any organization which exists for the purpose,
65 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
66 terms or conditions of employment, or for other mutual aid or protection in relation to
67 employment;

68 [(13)] **(14)** "Local commissions", any commission or agency established prior to August
69 13, 1986, by an ordinance or order adopted by the governing body of any city, constitutional
70 charter city, town, village, or county;

71 [(14)] **(15)** "Person" includes one or more individuals, corporations, partnerships,
72 associations, organizations, labor organizations, legal representatives, mutual companies, joint
73 stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized
74 groups of persons;

75 [(15)] **(16)** "Places of public accommodation", all places or businesses offering or
76 holding out to the general public, goods, services, privileges, facilities, advantages or
77 accommodations for the peace, comfort, health, welfare and safety of the general public or such
78 public places providing food, shelter, recreation and amusement, including, but not limited to:

79 (a) Any inn, hotel, motel, or other establishment which provides lodging to transient
80 guests, other than an establishment located within a building which contains not more than five
81 rooms for rent or hire and which is actually occupied by the proprietor of such establishment as
82 his residence;

83 (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility
84 principally engaged in selling food for consumption on the premises, including, but not limited
85 to, any such facility located on the premises of any retail establishment;

86 (c) Any gasoline station, including all facilities located on the premises of such gasoline
87 station and made available to the patrons thereof;

88 (d) Any motion picture house, theater, concert hall, sports arena, stadium, or other place
89 of exhibition or entertainment;

90 (e) Any public facility owned, operated, or managed by or on behalf of this state or any
91 agency or subdivision thereof, or any public corporation; and any such facility supported in
92 whole or in part by public funds;

93 (f) Any establishment which is physically located within the premises of any
94 establishment otherwise covered by this section or within the premises of which is physically
95 located any such covered establishment, and which holds itself out as serving patrons of such
96 covered establishment;

97 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to grant for
98 consideration the right to occupy premises not owned by the occupant;

99 [(17)] (18) "Respondent", a person who is alleged to have engaged in a prohibited
100 discriminatory practice in a complaint filed with the commission;

101 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful under this
102 chapter.

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an
2 unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent
3 that the alleged violation of section 213.070 relates to or involves a violation of section 213.055
4 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public
5 accommodations, the commission has not completed its administrative processing and the person
6 aggrieved so requests in writing, the commission shall issue to the person claiming to be
7 aggrieved a letter indicating his or her right to bring a civil action within ninety days of such
8 notice against the respondent named in the complaint. If, after the filing of a complaint pursuant
9 to sections 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of
10 section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or
11 subdivision (3) of section 213.070 as it relates to housing, and the person aggrieved so requests
12 in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating
13 his or her right to bring a civil action within ninety days of such notice against the respondent
14 named in the complaint. Such an action may be brought in any circuit court in any county in
15 which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or
16 associate circuit judge. Upon issuance of this notice, the commission shall terminate all
17 proceedings relating to the complaint. No person may file or reinstate a complaint with the
18 commission after the issuance of a notice under this section relating to the same practice or act.
19 Any action brought in court under this section shall be filed within ninety days from the date of
20 the commission's notification letter to the individual but no later than two years after the alleged
21 cause occurred or its reasonable discovery by the alleged injured party.

22 **2. Any party to any action initiated under this section may demand a trial by jury.**
23 **If such trial occurs in the circuit courts of the state of Missouri, the Missouri common law**
24 **relating to the presentation of evidence to a jury shall apply at trial, whether before a judge**
25 **or jury.**

26 **3. The court may grant as relief, as it deems appropriate, any permanent or temporary**
27 **injunction, temporary restraining order, or other order, [and may award to the plaintiff actual and**
28 **punitive damages,] and may award court costs and reasonable attorney fees to the prevailing**
29 **party, other than a state agency or commission or a local commission; except that, a prevailing**
30 **respondent may be awarded court costs and reasonable attorney fees only upon a showing that**
31 **the case is without foundation.**

32 **4. The court may award to the plaintiff actual damages, noneconomic damages, and**
33 **punitive damages. An award of noneconomic damages may include emotional pain,**
34 **suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary**
35 **losses.**

36 **5. The total amount of noneconomic damages awarded by the court for each**
37 **plaintiff shall not exceed the greater of five hundred thousand dollars or five times the**
38 **amount of economic damages awarded by the court.**

39 **6. Notwithstanding subsection 5 of this section, punitive damages shall not be**
40 **awarded against the state of Missouri or any other of its political subdivisions; except in**
41 **claims for discriminatory housing practices as authorized in section 213.040.**

42 **7. Subsections 4 and 5 of this section shall not apply when there is an alleged**
43 **violation of section 213.040, 213.045, or 213.050. Subsections 4 and 5 of this section shall**
44 **apply when there is an alleged violation of section 213.070 against an employer, but not**
45 **otherwise.**

285.575. 1. This section shall be known and may be cited as the "Whistleblower's
2 **Protection Act".**

3 **2. As used in this section, the following terms shall mean:**

4 **(1) "Because" or "because of", as it relates to a decision or action, the person's**
5 **status as a protected person was a motivating factor;**

6 **(2) "Employer", a person engaged in an industry affecting commerce who has six**
7 **or more employees for each working day in each of twenty or more calendar weeks in a**
8 **current or preceding calendar year. Employer shall not include corporations and**
9 **associations owned and operated by religious or sectarian groups;**

10 **(3) "Proper authorities", a governmental or law enforcement agency, or an officer**
11 **or the supervisor or management of the employer;**

12 (4) "Protected person", a person who has reported to the proper authorities an
13 unlawful act or act reasonably believed by the employee to be an unlawful act of the
14 employer or its agent or serious misconduct of the employer or its agent that violates a
15 clear mandate of public policy as articulated in a constitutional provision, statute,
16 regulation promulgated under statute, or rule created by a governmental body, or a person
17 who has refused to carry out a directive issued by an employer or its agent that if
18 completed would be a violation of the law. Additionally, a person who engages in conduct
19 otherwise protected by statute or regulation is a protected person.

20 3. This section is intended to codify the existing common law exceptions to the at-
21 will employment doctrine, and to limit their future expansion by the courts. This section
22 shall provide the exclusive remedy for any and all unlawful employment practices
23 articulated herein and hereby abrogates any common law causes of action to the contrary.
24 All defenses, privileges, and immunities, including but not limited to sovereign, official, and
25 governmental immunities and the public duty doctrine, that apply to causes of action under
26 the existing common law exceptions to the at-will employment doctrine shall apply to
27 causes of action under this section.

28 4. It shall be an unlawful employment practice for an employer, as defined in
29 subdivision (2) of subsection 2 of this section, to discharge or retaliate against an individual
30 defined as a protected person in this section, because of that person's status as a protected
31 person.

32 5. A protected person aggrieved by a violation of this section shall have a private
33 right of action for damages for violations of this section which may be filed in a circuit
34 court of competent jurisdiction. The court may grant as relief, as it deems appropriate,
35 any permanent or temporary injunction, temporary restraining order, or other order, and
36 may award to the plaintiff actual noneconomic and punitive damages.

37 6. The court may award to the plaintiff actual damages, noneconomic damages, and
38 punitive damages. An award of noneconomic damages may include emotional pain,
39 suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary
40 losses.

41 7. The total amount of noneconomic damages awarded by the court for each
42 complainant shall not exceed the greater of five hundred thousand dollars or five times the
43 amount of economic damages awarded by the court.

44 8. The limit set forth in subsection 7 of this section shall increase or decrease in the
45 same amounts as any corresponding limits are increased or decreased in 42 U.S.C. Section
46 1981a(b)(3).

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